Exhibit A

AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration Tribunal

In the Matter of the Arbitration Between

SULLIVAN & CROMWELL LLP,

Claimant, AAA Case No. 01-15-0002-9299

-and-

JAMES C. JUSTICE II, et al,

Respondents.

FINAL AWARD

WE, THE UNDERSIGNED ARBITRATORS ("the Tribunal"), having been appointed pursuant to an arbitration agreement entered into between Sullivan & Cromwell LLP ("Claimant") on the one hand and Respondents James C. Justice II (individually and as Trustee of the James C. Justice II GRAT No.1 and James C. Justice II GRAT No. 2), James C. Justice III, Jillean L. Justice and the James C. Justice Companies, Inc. (collectively "Respondents") on the other hand (Claimant and Respondents collectively "the Parties"), and dated as of February 18, 2014, and having been duly sworn, and having duly heard the proofs, allegations and arguments of the Parties, hereby FIND AND AWARD as follows:

I. Factual and Procedural Background

1. This arbitration concerns an attorney-client engagement agreement providing for a contingent fee ("the Fee Agreement") entered among Claimant and Respondents.

2. Claimant is a law firm organized as a limited liability partnership with its principal place of business in New York, New York.

3. Respondent James C. Justice II is an individual residing in West Virginia with a business address in White Sulphur Springs, West Virginia. Mr. Justice signed the Fee Agreement in his personal capacity and in his capacity as trustee for two trusts, the James C. Justice II GRAT No. 1 and the James C. Justice II GRAT No. 2.

4. Respondent James C. Justice III is an individual residing in Virginia with a business address in Roanoke, Virginia. Mr. Justice signed the Fee Agreement in his personal capacity.

5. Respondent Jillean L. Justice is an individual residing in Virginia with a business address in Blacksburg, Virginia. Ms. Justice signed the Fee Agreement in her personal capacity.

6. Respondent James C. Justice Companies, Inc. ("Justice, Inc.") is a Delaware Corporation with a principal place of business in Beckley, West Virginia. Justice, Inc.'s Vice President of Operations, Steve Ball, signed the Fee Agreement on its behalf.

7. Claimant and Respondents entered the Fee Agreement in connection with Respondents' engagement of Claimant as their attorneys in an action brought by Mechel Bluestone, Inc. and Mechel Mining OAO (collectively "the Mechel Companies") in Delaware Chancery Court against Respondents ("the Delaware Litigation") and related litigation as described in a section entitled "Scope of Services" appearing on page 2 of the Fee Agreement.

8. The Complaint in the Delaware Litigation (Exhibit J26) alleged that Respondents were not entitled to a contingent payment Respondents alleged that the Mechel Companies owed to Respondents in connection with a merger agreement dated as of March 16, 2009 regarding certain coal assets ("the 2009 Merger Agreement"). The 2009 Merger Agreement had provided for a cash payment from the Mechel Companies to Respondents based upon the identification of certain contingent reserves pursuant to a drilling program commencing after the close of the merger. The Mechel Companies challenged Respondents' conduct of the drilling program and their entitlement to an additional contingent payment of approximately $167 million claimed by Respondents.

9. A brief explanation of the subject matter of the Delaware Litigation is helpful to an understanding of the issues in dispute in this arbitration. The coal assets transferred in the 2009 Merger Agreement and at issue in the

Delaware Litigation were comprised of a variety of mines and unmined reserves located on a set of coal-mining properties located in McDowell and Wyoming Counties in West Virginia ("The Bluestone Properties"). The Bluestone Properties are primarily recognized for metallurgical coal although the properties also produce some volume of thermal coal.

10. Metallurgical coal is coal with characteristics making it suitable for use in connection with the production of coke, which in turn, is used in manufacturing steel. Thermal coal is primarily used in coal-fired power plants to generate energy. The metallurgical coal market and the thermal coal market are separate and distinct, and the price of metallurgical coal is for the most part higher than that of thermal coal.

11. Prior to 2009, Respondents owned and operated the Bluestone Properties. In 2009, through the 2009 Merger Agreement, companies associated with Respondents sold the Bluestone Properties to the Mechel Companies for a price that the parties dispute but that both parties agree was in the hundreds of millions of dollars. The price of metallurgical coal was at its height in 2009.

12. One of the elements of the deal between Respondents and the Mechel Companies was that the latter would make an additional payment to Respondents based on the value of certain reserves to be identified in an engineering report issued after a drilling program conducted by a company named Weir International ("Weir"). Weir's report identified additional reserves that would have led to a contingent payment from the Mechel Companies to Respondents of approximately $167 million – the amount at issue in the Delaware Litigation.

13. Accordingly, Respondents, represented by Claimant pursuant to the Fee Agreement, filed an answer in the Delaware Litigation and a counterclaim against the Mechel Companies seeking payment of the $167 million. (Exhibit J27.) Claimant represented Respondents in the Delaware Litigation until Respondents terminated the Delaware Litigation with a settlement. Respondents settled the Delaware Litigation without any involvement by Claimant and without informing Claimant of the settlement's terms. The value of Respondents' settlement of the Delaware Litigation is the subject of the present arbitration.

14. The Fee Agreement (Exhibit J1) provides that as compensation for the representation, Respondents would pay Claimant a non-refundable retainer in

the amount of $1 million. (Fee Agreement ¶ 1.) Respondents were to pay the retainer in installments on a schedule specified in the Fee Agreement. Claimant has introduced evidence that Respondents were late in making one or more of the installment payments due under the Fee Agreement, but it is undisputed that the retainer has been paid in full.

15. The Fee Agreement also provides that Respondents were to reimburse Claimant for customary disbursements, and for expenses advanced to third parties such as experts and consultants, within thirty days of receiving an invoice. (Fee Agreement ¶ 2.) Again, Claimant has presented evidence that Respondents were late in making disbursement payments, but it is undisputed that all disbursements have been paid.

16. Finally, the Fee Agreement provided for a contingency fee payment to Claimant in the event that Respondents obtained a "Recovery" in the Delaware Litigation. Under the Fee Agreement, Claimant was to receive 10% of the Recovery if the Recovery occurred before 2015 and 15% of the Recovery if the Recovery occurred in 2015 or later, with each amount to be reduced by the initial $1 million retainer. (Fee Agreement ¶¶ 4, 5.) In the event the Delaware Litigation concluded with no Recovery, Claimant was to receive nothing other than the initial $1 million retainer and reimbursement for its disbursements and for expenses advanced to third parties. (Fee Agreement ¶ 3.)

17. The dispute in this arbitration concerns whether the Delaware Litigation concluded with a Recovery of value to Respondents and, if so, the value of the Recovery.

18. The Fee Agreement defines "Recovery" as follows:

> "Recovery" means the collected and collectible total of all money paid or to be paid and awarded to Justice, and all non-monetary components obtained by Justice, in any settlement of the Action or in any judgment or otherwise as a result of litigation.

(Fee Agreement ¶ 6.) The Fee Agreement provides that the Parties should attempt to agree on the value of any non-monetary component of the Recovery, and that if they cannot agree, that the value is to be determined through arbitration.

19. This arbitration arises from Respondents' decision in late 2014 to settle the Delaware Litigation. Under the settlement, the parties were to dismiss the Delaware Litigation and Respondents were to release their counterclaims against the Mechel Companies under the contingent drilling program as a part of an agreement by Respondents to repurchase the Bluestone Properties from the Mechel Companies for (a) an up-front payment of $5 million plus (b) an overriding royalty of $3.00 per ton of coal mined (with a maximum value of $150 million) and certain contingent payments in the event that Respondents resold the Bluestone Properties. The transaction was structured as a stock deal under which a company created by Respondents purchased the outstanding equity in Mechel Bluestone, Inc. ("Mechel Bluestone"), the Delaware corporation that held the Bluestone Properties. Respondents purchased the Bluestone Properties through a "shell company" to limit financial exposure (James Justice testimony, Transcript, p. 600.)

20. Claimant alleges that the Bluestone Properties which Respondents purchased in connection with the settlement were a "Recovery" under the Fee Agreement at the time of the purchase and were worth up to $293 million. (Weiss Supplemental Expert Report § 1.1.) Respondents acknowledge that the Bluestone Properties were a "Recovery" under the Fee Agreement but allege that at that time they were worth a negative $135 million (Schwartz Expert Report, Exhibit 1).

21. If Claimant is correct, Respondents owe Claimant millions of dollars pursuant to the contingent fee provision of the Fee Agreement. If Respondents are correct, Respondents owe Claimant nothing under the Fee Agreement as the value of the Recovery is less than zero.

22. The Parties also dispute when the Recovery occurred. Respondents argue that the Recovery occurred when Respondents exercised an option to enter the transaction on December 29, 2014. Claimant argues that the Recovery occurred when the transaction closed on February 12, 2015. The significance of this dispute is that if the Recovery occurred in 2014 as Respondents contend, Claimant's contingent share will be 10%. Alternatively, if the Recovery occurred when the transaction closed as Claimant contends, Claimant's contingent share will be 15%.

23. The Fee Agreement states that it is to be governed by and interpreted in accordance with the laws of the State of New York.

24. Claimant commenced this arbitration with its Demand for Arbitration dated March 11, 2015. Claimant requested relief in the form of a Final Award declaring (a) that Respondents each are jointly and severally liable to pay Claimant no less than $25,446,163.59 plus 9% prejudgment interest pursuant to N.Y.C.P.L.R. §§ 5001 and 5004; (b) declaring that Respondents each are jointly and severally liable to compensate Claimant for certain outstanding disbursements (which have now been paid) with interest; (c) awarding Claimant its costs and attorneys' fees in connection with this arbitration; and (d) granting Claimant such other and further relief as the Tribunal deems just and proper. (Statement of Claim ¶ 58.)

25. Respondents submitted an Answering Statement on April 8, 2015 denying Claimant's allegations. Respondents did not include a specific request for relief in their Answering Statement but Respondents have consistently contended that they owe nothing under the Fee Agreement. Respondents did not request recovery of their costs and attorneys' fees in connection with this arbitration.

26. The Fee Agreement contains two arbitration clauses. A specific clause applicable to disputes over paragraph 6 of the Fee Agreement regarding the amount of a "Recovery" provides that disputes are to be resolved expeditiously via binding arbitration in New York City before three arbitrators, all of whom shall be members of the New York Bar, under the rules of the American Arbitration Association. (Fee Agreement ¶ 6.) Paragraph 6 of the Fee Agreement also states that "[a]ny dispute arising out of or relating to this Agreement shall be subject to a binding arbitration on the same terms." (Id.)

27. The Fee Agreement, however, also includes a more general arbitration clause in an unnumbered paragraph titled "*arbitration*" that provides as follows:

> Any controversy or claim arising out of or relating to this agreement or our representation of Justice in this or any future matter, including but not limited to any fee dispute or claim for malpractice, negligence, breach of fiduciary duty, or breach of contract, shall be settled by arbitration in New York administered by the American Arbitration Association. The arbitration shall be conducted in English. The designated arbitrator(s) shall have the authority to award any and all relief that would otherwise be available in a court of law, and judgment on any award may be entered in a court of competent jurisdiction.

This arbitration provision also provides that the arbitration shall be confidential and that the award may not be disclosed to any other person except as required by law or as necessary in court proceedings, such as proceedings to recognize or enforce an award. (Fee Agreement, page. 5.) The arbitration provision also recites that by agreeing to arbitration, Justice is foregoing the right to a trial by jury. (Id.)

28. The Tribunal was appointed by the American Arbitration Association ("AAA") on June 9, 2015. Each member of the Tribunal is a member of the New York Bar as provided by the more specific arbitration provision in Paragraph 6 of the Fee Agreement. Each member of the Tribunal made certain disclosures and the Parties were given until June 23, 2015 to provide any objections to such disclosures.

29. The Tribunal convened a telephonic preliminary hearing on June 30, 2016 to discuss procedure for the arbitration. The preliminary hearing resulted in a variety of agreements among the Parties and orders of the Tribunal which were memorialized in a First Procedural Order.

30. The following agreements entered by the Parties at the preliminary hearing were documented in the First Procedural Order:

a. The arbitration was to be conducted pursuant to the AAA Commercial Arbitration Rules;

b. The Parties had no objection to the jurisdiction of the Tribunal; and

c. All procedural prerequisites to this arbitration had been completed or had been waived.

31. Shortly before the scheduled commencement of the evidentiary hearing, Respondents made an application to the Tribunal to disqualify Claimant's lead counsel from participating as an advocate at the evidentiary hearing on the ground that he would also be a testifying witness as part of Claimant's case. After receiving written confirmation from each of Claimant and Respondents respectively that they wished to have the Tribunal (and not a court) decide the issue, the Tribunal entertained briefing on the issue and denied the application.

32. An evidentiary hearing was held in this arbitration from January 26 through 29, 2016. At the evidentiary hearing, Claimant presented percipient

testimony from George Sampas, a partner with Sullivan & Cromwell LLP, and David Tulchin, Of Counsel with Sullivan & Cromwell LLP. Claimant also presented expert testimony from John L. Weiss of the John T. Boyd Company. Respondents presented percipient testimony from James ("Jim") Justice II and James ("Jay") Justice III. Respondents also presented expert testimony from John E. Feddock of Cardno, Inc. and Seth Schwartz of Energy Ventures Analysis, Inc. Both Parties introduced testimony from Daniel Chu of Deutsche Bank.

33. The Tribunal admitted the written reports submitted by the Parties' experts as the direct testimony of those experts at the hearing. The Tribunal also gave the Parties a period of time to elicit direct testimony from the experts at the hearing to explain and elucidate their reports.

34. At the conclusion of the evidentiary hearing, the Parties rested their cases on the merits and confirmed that the submission of factual evidence was complete. The Parties returned for argument on March 3, 2016 and at that time the Tribunal brought back the Parties' expert witnesses to answer certain questions from the Tribunal including a set of questions presented to the Parties in an email from the Tribunal Chair dated March 1, 2016 and placed into the record as Tribunal Exhibit 1. Following the hearing on March 3, 2016, the Tribunal submitted some additional questions to the Parties in a procedural order. The Parties responded to those questions in writing on March 25, 2016.

35. The Tribunal declared the proceedings closed on April 14, 2016.

II. Analysis

A. Was Respondents' Acquisition of the Bluestone Properties a "Recovery" under the Fee Agreement?

36. As previously recited, the Fee Agreement provides that "Recovery" means the collected and collectible total of all money paid or to be paid and awarded to Justice, and all non-monetary components obtained by Justice, in any settlement of the Delaware Litigation or in any judgment or otherwise as a result of the Delaware Litigation. (Fee Agreement ¶ 6.)

37. The Parties agree that the Bluestone Properties obtained by Respondents in connection with the settlement of the Delaware Litigation is a non-monetary component of a Recovery as defined in the Fee Agreement. (*See* Claimants' post-hearing brief, p. 1; Respondent's post-hearing brief, pp. 3-4.) The Parties,

however, dispute when that Recovery occurred and what the Recovery was worth.

B. When did the "Recovery" of the Bluestone Assets Occur?

38. The Tribunal will first examine when the Recovery occurred. Respondents argue that the Recovery occurred on December 29, 2014, when Respondents exercised an option to purchase the Bluestone Properties. Claimant argues that the Recovery occurred on February 12, 2015, when the transaction under which Respondents repurchased the Bluestone Properties closed.

39. The Fee Agreement provides for Claimant to receive 10% of any Recovery in 2014 but 15% of any Recovery in 2015 or later. (Fee Agreement ¶¶ 4, 5.) Thus, assuming that the transferred Bluestone Properties have value, whether the Recovery occurred before or after January 1, 2015 is economically significant with respect to amounts due under the Fee Agreement.

40. The record of this arbitration shows that Respondents entered an option to purchase Mechel Bluestone and its various subsidiaries on December 14, 2014 ("Option Agreement"). (Exhibit J70.) The Option Agreement granted Respondents an option to purchase the Bluestone Properties with a term commencing on the date of the agreement and terminating on December 30, 2015. The Option Agreement provided that the sale would be consummated with a share purchase agreement to be executed within 45 days of exercise of the option by Respondents ("Definitive Agreement"). The Option Agreement provided for an option payment of $5 million to be placed into escrow, $1 million of which was to be released and become non-refundable at the close of an initial option term defined as three days after the escrow agent received the option. The Option Agreement is ambiguous regarding whether the remaining $4 million became non-refundable when Respondents exercised the option. Section 3 of the Option Agreement states that the balance of the $5 million option payment (other than the $4 million released at the end of the initial option term) shall "be refundable through the remainder of the Option Term and shall only become refundable upon the signing of the Definitive Agreement." (Option Agreement § 3.) However, Section 6 of the Option Agreement states that upon exercise of the option using a form attached to the Option Agreement as Exhibit B, "the balance of the Option Payment shall become due and fully non-refundable." (Option Agreement § 6.)

41. Respondents exercised the option on December 29, 2014. (Exhibit J-105.) They then proceeded with the transaction, which closed with a Definitive Agreement on February 12, 2015. (Exhibit J2.) In accordance with the terms of the Definitive Agreement, the Delaware Litigation was dismissed with prejudice on February 13, 2015. (Exhibit J30.)

42. It is unclear under the terms of the Option Agreement whether Respondents, after exercising the option, had committed to a $1 million non-refundable payment or to a $5 million non-refundable payment. (The Tribunal notes, however, that Respondents' expert, Mr. Schwartz, states in his expert report that only $1 million was non-refundable. (Schwartz Expert Report, p. 5.))

43. What is clear though, is that absent the conclusion of the Definitive Agreement, Respondents could walk away from the deal at a cost of forfeiting whatever part of the option payment was non-refundable. Had Respondents walked away from the deal without signing a Definitive Agreement, they would not have taken ownership of the Bluestone Properties and they would not have been obligated to dismiss the Delaware Litigation.

44. In connection with the closing, Respondents executed a rescission agreement, rescinding the original option to purchase. Claimant suggested at the evidentiary hearing that the rescission of the Option Agreement in connection with the closing is evidence that the date of exercise of the option should not be interpreted to be the date of the Recovery.

45. Jay Justice testified at the hearing that Respondents executed the rescission agreement because the option to purchase had been executed by the James C. Justice Companies while the final transaction had been consummated by a new company set up by Respondents called Bluestone Resources. (Transcript at 741-42.) This was done in order to insulate the James C. Justice companies from potential liabilities associated with the purchase. (Id.) The Tribunal finds Mr. Justice's explanation of the rescission agreement credible and finds that the rescission does not affect the analysis of when the Recovery occurred.

46. However, the mechanics of the Option Agreement itself, under which Respondents were not to take possession of the Bluestone Properties until the execution of a Definitive Agreement, and under which they could have chosen to walk away and continue prosecuting the Delaware Litigation, albeit at a

substantial cost, compel the conclusion that no Recovery occurred until the transaction closed.

47. This conclusion is reinforced by Respondents' experts' choice of February 2015 as the date from which to measure the value of the Bluestone Properties. Mr. Schwartz valued the assets from the time of the transaction, which he identifies as having occurred on February 12, 2015 (Schwartz Expert Report, p. 16.)

48. Accordingly, the Tribunal concludes that for purposes of the Fee Agreement, the Recovery corresponding to Respondents' acquisition of the Bluestone Properties occurred on or about February 12, 2015. Under the terms of the Fee Agreement, this means that Claimant is entitled to be paid 15% of the total value of that Recovery, assuming it has a positive value, less the $1 million retainer. (Fee Agreement ¶ 6.)

C. What Was the Value of the "Recovery" of the Bluestone Assets?

49. The primary questions before the Tribunal involve determining the methodology it should use to value the Bluestone Properties, and using a proper methodology, calculating the value of those assets.

50. The Parties agree to some extent regarding valuation methodology. Both Parties have introduced testimony from expert witnesses seeking to value the Bluestone Properties based on a discounted cash flow ("DCF") analysis of expected cash flows from the mines located on the Bluestone Properties.

51. Both Parties have also sought to bolster their DCF analyses with reference to the prices of allegedly comparable coal transactions. However, the Tribunal finds the evidence submitted by the Parties regarding allegedly comparable properties to be too anecdotal and particular to those other properties to be useful.

52. The primary vehicle through which the Parties have introduced their valuation evidence is expert testimony and analysis. Each of Claimant and Respondents introduced a DCF model through a coal industry expert. The Tribunal will discuss Claimant's expert submissions first and then Respondents' expert submissions. The Tribunal will then analyze those submissions with reference to other evidence that was introduced and elicited during the proceedings.

(i) Claimant's Expert Submissions

53. Claimant submitted testimony from John L. Weiss, Vice President of John T. Boyd Company, in support of its position. Mr. Weiss is a mining engineer with more than 32 years of experience in the mining industry and has been employed by the John T. Boyd Company for 25 years. The John T. Boyd Company is a mining and geological consulting company based in Pennsylvania with a focus on the coal industry. Mr. Weiss' CV and his testimony demonstrated that he has substantial experience with the valuation of coal properties. However, he does not have a financial background other than his work as a mining consultant.

54. On the whole, the Tribunal finds that Mr. Weiss is qualified to offer an opinion on the subject matter of his testimony.

55. Mr. Weiss prepared a DCF analysis of the Bluestone Properties as of February 2015 under which he projected six valuation scenarios built on production, cost and revenue assumptions. He concluded that the value of the Bluestone Properties as of February 2015 was in a range (depending on assumptions) of $120 million to $293 million.

56. Mr. Weiss testified that the market for metallurgical coal exhibits both cyclicality and volatility. According to Mr. Weiss's testimony, cyclicality results from imbalances in supply and demand arising from production increases when prices are high that, in turn, lead to price reductions due to oversupply. Mr. Weiss testified that, at least in the 2000 to 2011 time-frame, metallurgical coal prices also exhibited volatility, with rapid up-and-down movement due to macroeconomic factors such as increased steel production in China and floods in Australia.

57. Mr. Weiss opined that because coal mining is a capital intensive business with long lead times, large operators have difficulty taking advantage of price swings in the coal market. He opined that small savvy producers, including, in his opinion, Respondents, would be better positioned to take advantage of market swings.

58. Mr. Weiss based his valuation in part on his assumption that Respondents' in-depth knowledge of the Bluestone Properties and the metallurgical coal business would both enable Respondents to acquire coal properties when prices are low and sell those properties when prices are high, and to opportunistically take advantage of market cycles and price volatility to

maximize profits. In other words, Mr. Weiss valued the mines from the perspective of Respondents in particular rather than at fair market value to a reasonable buyer. As discussed below, this is a point of contention between the Parties.

59. Mr. Weiss based his DCF analysis on the assumption that coal prices will exhibit continued volatility with metallurgical coal prices ranging from $70 per ton up to more than $150 per ton (FOB mine) in regular three-year cycles. Mr. Weiss's DCF model assumes that the Respondents would "turn on" production when prices reach $90 per ton FOB mine and then turn production back off when prices go below $90 per ton FOB mine. Mr. Weiss included the $5 million cash component of the purchase price in his DCF analysis.

60. Mr. Weiss's production assumptions appear to be based on estimated reserves that prior engineering reports had determined to be associated with "developed" and "to-be-developed" metallurgical coal mines on the Bluestone Properties. Mr. Weiss estimated mining costs at $60 per ton. Mr. Weiss did not perform his own engineering analysis to determine price or mineable reserves.

61. Based upon these assumptions, and providing for increased capital expenditures for turning on and turning off production to accommodate cyclicality, Mr. Weiss projected three scenarios differentiated by presumed levels of production and discount rates:

Value		
Scenario	15% discount	12% discount
Low-Range	$120 million	$145 million
Mid-Range	$174 million	$214 million
High-Range	$238 million	$293 million

Weiss Supplemental Report, p. 2.) Applying either of the Recovery formulas from paragraphs 4 and 5 of the Fee Agreement to Mr. Weiss' proposed valuation would result in a substantial contingent fee payable to Claimant.

(ii) Respondents' Expert Submissions

62. Respondents submitted reports and testimony from two experts. First, Respondents submitted testimony from John E. Feddock, Senior Principal – EES Mining, Cardno, Inc. Second, Respondents submitted testimony from Seth Schwartz, President of Energy Ventures Analysis.

63. Mr. Feddock, like Mr. Weiss, is a mining engineer. Mr Feddock's CV demonstrates that he has substantial mining engineering experience and, in particular, experience in mine planning and mine economics. Cardno, Inc. is a well-established mining engineering firm.

64. The Tribunal finds that Mr. Feddock is qualified to offer an opinion on the subject matter of his testimony.

65. Mr. Feddock examined the Bluestone Properties in great detail on a mine-by-mine basis in order to develop a cost and production model for the Bluestone Properties. Mr. Feddock's model differentiated costs for each mine based on its individual characteristics, including, for example, whether the mine is a surface-mine or an underground mine, based upon historical cost data. Mr. Feddock then developed a mine plan to identify potentially economic mines on the Bluestone Properties. Mr. Feddock identified a number of mines that in his opinion had no reasonable potential for economic development. Mr. Feddock then identified certain mines with potential for exploitation. He calculated potential production and mining costs associated with those mines on a mine-by-mine basis with an average direct mining cost of $63.51 per ton.

66. In addition, Mr. Feddock calculated reclamation liability associated with his proposed mine-plan. Reclamation liabilities are costs associated with returning a mined property to approved post-mining use based on the mine's permit and applicable regulations. Mr. Feddock estimated these costs to be in excess of $75 million. As discussed below, Mr. Feddock's calculation of reclamation liability is entirely inconsistent with the calculations of reclamation liability reported in connection with Respondents' February 2015 acquisition of the Bluestone Properties.

67. Respondents' second expert, Mr. Schwartz, is a coal market analyst. His educational background, like that of the other experts, is in geological engineering. However, Mr. Schwartz focuses on analysis of coal markets and valuation of coal properties.

68. The Tribunal finds that Mr. Schwartz is qualified to offer an opinion on the subject matter of his testimony.

69. Mr. Schwartz developed a DCF model for the Bluestone Properties using Mr. Feddock's mine plan. Mr. Schwartz agreed with Mr. Weiss that the value of the Bluestone Properties should be determined as of February 2015. Unlike, Mr. Weiss, however, Mr. Schwartz did not assume regular pricing cycles and

substantial volatility of metallurgical coal prices going forward. Rather, Mr. Schwartz attributed the volatility in the 2005 through 2011 time-period to one-time events and macroeconomic factors that are not likely to recur. Mr. Schwartz based his pricing assumptions on a publication called "Energy & Metals Consensus Forecasts" published by Consensus Economics ("Consensus Economics Forecasts"). The Consensus Economics Forecast as of February 2015 predicts a slow and steady recovery of metallurgical coal prices over time but does not build the possibility of large price fluctuations into the model.

70. Mr. Schwartz applied the Consensus Economics Forecasts to Mr. Feddock's mine plan to identify potentially economic mines. Using a discount rate of 15%, Mr. Schwartz estimated an after-tax present value for the Bluestone Properties of $38,690,155 plus real estate value of $3,368,588, for a total discounted cash flow value of $42,058,743.

71. This did not end Mr. Schwartz's analysis however. After reaching his DCF value, Mr. Schwartz subtracted a variety of costs from his DCF value as follows:

Schwartz's Valuation	
Net present value of properties	$38,690,155
Real Estate (land)	$3,368,588
Total Asset Value	**$42,058,743**
Reclamation Liability	(62,947,739)
OPEB Liability (UMWA)	(41,663,464)
Working Capital Deficit	(35,611,915)
Pension Withdrawal Liability	(37,373,431)
Net Company Value	(135,537,807)

(Schwartz Report, p. 3.) Mr. Schwartz does not appear to have included the $5 million cash component of the purchase price in his DCF analysis, which would subtract an additional $5 million from the value of the assets.

72. Mr. Schwartz's application of the assumed liabilities identified above moves his valuation from a positive value to a substantial negative value. It is thus important to understand what these alleged liabilities are.

73. Reclamation liability, as previously explained, consists of costs associated with end-of-mine restoration of property. Mr. Schwartz obtained this number by starting with Mr. Feddock's conclusion of $74,580,509, and then applying an average annual inflation rate of 2.04% and a discount rate of

7.47%. The result of this analysis was an alleged reclamation liability of $62,947,739.

74. Other Post-Employment Benefits ("OPEB") liability is the present value of the future cost of post-retirement healthcare benefits under the United Mineworkers of America ("UMWA") plan. Mr. Schwartz calculated this number by taking the accrued liability on the Mechel Companies' balance sheet at the end of 2014 (generated using a discount rate of 4.48%) and reducing it by a tax rate of 20.05% to arrive at a total liability of $41,663,464.

75. Mr. Schwartz also reduced his valuation of the assets by the amount of a working capital deficit defined as the imbalance between current accounts within a given year. Mr. Schwartz opined that because most companies should not operate with a working capital deficit, this amount, $35,611,915, should be deducted from the value of the Bluestone Properties.

76. Finally, Mr. Schwartz deducted an alleged liability associated with the withdrawal of mines at the Bluestone Properties from the 1974 UMWA Pension Plan. The UMWA 1974 pension plan is a multi-employer pension plan that provides retirement benefits to retirees and their dependents. Signatory coal companies are required to contribute at a prescribed rate. Companies incur withdrawal liability at a rate calculated by a formula under ERISA if they cease contributions to the pension plan. Mr. Schwartz estimated this withdrawal liability at $37,373,431.

77. Notably, Mr. Schwartz's analysis used significantly lower discount rates for the assumed liabilities than he used in the DCF analysis based upon the supposition that those liabilities are more certain to occur than the future cash flows.

(iii) Other Evidence of Valuation

78. Beyond the expert reports, there is little concrete evidence regarding the value of the Bluestone Properties. Respondents did not conduct any significant due diligence, did not hire an investment bank to assess the assets, and did not generate a new mine-plan in connection with the transaction. This may have resulted from Respondents' intimate knowledge of the properties obtained from having operated them for years before the transfer to the Mechel Companies. Nonetheless, the lack of a record associated with due diligence leaves the Tribunal with little to work with other than the expert reports submitted by the Parties.

79. There are a few documents of significance in the record. Deutsche Bank's November 2014 offering presentation regarding the Bluestone Properties provides some insight into valuation. (Joint Exhibit 47.) The Deutsche Bank offering presentation projects that the Bluestone Properties would be profitable going forward based upon pricing significantly in excess of the pricing proposed by Mr. Schwartz (although it appears to reflect price levels in 2012). Notably, it is more consistent with Mr. Schwartz's projection of a relatively modest straight-line increase in prices over time than it is with Mr. Weiss's projection of significant price swings on a three year cycle. With respect to liabilities, the Deutsche Bank offering presentation identifies $6.7 million ($4.1 million after taxes) of reclamation liability and assigns no value to contingent pension withdrawal liability.

80. The record also reflects a summary of Respondents' offer to re-acquire the Bluestone Properties that was sent by Deutsche Bank's Dan Chu to Jay Justice on December 18, 2014. (Joint Exhibit 48.) The offer summary assigns significant value to many of the liabilities subtracted from the Bluestone Properties' value by Mr. Schwartz. One significant exception to this is the reclamation liability (referred to in the offer summary as "asset retirement obligation") which is valued at less than $10 million. However, the offer also places a value on the Delaware Litigation of $167 million, corresponding with the full value of Respondents' counterclaim.

81. The record also includes a summary reserves report contained in an email from Zachary Wright (Head of Reserves and Resource Management for Respondents' companies) to Steve Ball, dated December 18, 2014. (Joint Exhibit 58.) This report identifies 20.2 million tons of surface reserves and 37.6 million tons of underground reserves available within 24 months. This number is in significant excess of the reserves estimated by Mr. Feddock, but there is no evidence in the record to establish whether Mr. Wright had performed an analysis or simply reported numbers he had seen in the deal data room. The report also states that liabilities include "drop dead reclamation liability of $7.4 million."

82. The record also includes an analysis of liabilities that appears to have been prepared by David Harrah, Chief Financial Officer for Mechel Bluestone. (Joint Exhibit 59.) The report concludes that "[g]enerally speaking, the Company has little term debt and is more heavily weighted towards working capital liabilities and certain non-routine liabilities (stream mitigation and litigation settlement"). The document also estimates asset retirement

(reclamation) liabilities and OPEB liabilities at significantly lower numbers than Mr. Schwartz assumes. According to Claimant, this document demonstrates that the working capital deficit can be negotiated down. In contrast, Respondents cite the document as evidence that the working capital obligations would need to be paid in the near term.

83. In addition to the documentary evidence, the record reflects testimony from Respondents that they repurchased the Bluestone Properties not because they thought it had economic value (at least as of the time of purchase) but out of sentimental attachment to the property and a commitment to the people of West Virginia. (Jim Justice, Transcript pp. 599-602; Jay Justice, Transcript 853-55.)

84. The Tribunal assesses all of this evidence below.

iv. Valuation Analysis

85. As an initial matter, the documentary evidence contemporaneous with the transaction is sparse and contradictory. The Tribunal finds it useful as a "reality-check" in evaluating the conclusions of the Parties' experts, but in itself, the contemporaneous evidence is not sufficient to establish a value for the Bluestone Properties.

86. The Parties' experts, on the other hand, reach starkly different conclusions regarding the value of the Bluestone Properties. Mr. Weiss, for Claimant, finds that that Bluestone Properties are worth up to $293 million. Messrs. Feddock and Schwartz, for Respondents, find that the Bluestone Properties are worth a negative $135 million.

87. Claimant remarks in its post-hearing briefing that the value of the Bluestone stock, which is the vehicle by which the Bluestone Properties were transferred, cannot be less than zero dollars. This point is well taken, and any result of a DCF analysis that reaches a negative number is effectively a finding that the stock is worthless.

88. It is perhaps surprising then that there are several issues on which the Parties' experts agree (although they have been loath to admit such agreement). For example, Mr. Weiss' estimate of direct mining costs, $ 60 per ton, is very similar to the number that Mr. Feddock projected and Mr. Schwartz used, $63.51 average per ton. Likewise, Respondents' experts presumed production numbers are similar to the numbers generated by Mr. Weiss. For example,

Respondent's projected production through 2030 of 13,278,433 tons is similar to Mr. Weiss' mid-level projection of 13,650,000 tons, and Respondents' projected production through 2043 of 19,577,183 tons is similar to Mr. Weiss' low-level projection of 18,900,000 tons.

89. The most significant areas of disagreement are how to project future prices for metallurgical coal and how to account for assumed liabilities. The experts (and the Parties themselves) also disagree about whether the value of the Bluestone Properties should be fair market value to a reasonable buyer or, instead, the value to Respondents. Each of these issues is discussed below.

90. The Tribunal first turns to future coal prices.

91. Both Parties acknowledge that the projection of future commodities prices, including the price of metallurgical coal, is inherently speculative. However, Respondents argue that by basing his pricing projections on consensus forecasts developed by industry analysts, Mr. Schwartz avoided speculation by adopting valuation methodology that is standard in the industry. Respondents also argue in their post-hearing briefing that Mr. Schwartz, unlike Mr. Weiss, was not speculating because he calculated a fair market value as of February 2015, but Mr. Weiss purportedly did not.

92. Respondents' second argument is not persuasive. Mr. Weiss, like Mr. Schwartz, sought to value the assets as of February 2015. The difference in the Parties' analyses arose from whether additional value can be attributed to factors specific to Respondents. That point is addressed below.

93. Respondents' first argument regarding consensus forecasts is far more convincing. Given the need to prognosticate regarding future prices, it is certainly reasonable to rely on a consensus of industry analysts. Moreover, the evidence in the record suggests that this is an approach used in the industry. For example, the Deutsche Bank offering presentation used an industry analyst's price projection to value the future income stream from the Bluestone Properties. (Joint Exhibit 47.) That prices had deteriorated from the date that particular report was issued does not detract from its usefulness as a model for developing a DCF analysis in the metallurgical coal business.

94. In contrast, Mr. Weiss' analysis is highly idiosyncratic. Claimant was not able to point to any other analysis of a coal property (or even future coal prices) that assumed severe but regular cyclical price swings like those assumed by Mr. Weiss. This is not to say that the market is likely to exhibit the precise

characteristics that the consensus analysts predict. To the contrary, prices have already deviated from that model – although the model predicts a gradual increase, prices have declined. However, the pricing data adopted by Respondents appears to be the type of data accepted by the market.

95. On the whole, the Tribunal finds Respondents' future price assumptions more credible and, as discussed below, will apply those presumptions. Before moving on to the application of liabilities to the analysis, however, it is necessary to address the Parties' disagreement regarding whether the Tribunal can assess whether the Bluestone Properties are of special value to Respondents.

96. Claimant argues that because the Fee Agreement refers to the value of non-monetary components "obtained by Justice," the value should be assessed based on the value specific to Respondents rather than fair market value to an average investor. The language of the Fee Agreement is not as straightforward as Claimant suggests. Paragraph 6 of the Fee Agreement defines "Recovery" as "the collected and collectible total of all money paid or to be paid or awarded to Justice, and all non-monetary components obtained by Justice. . . ." There is no mention of "value" in the definition. The concept of "value" is mentioned only in the second sentence of Paragraph 6, which states that "Justice and S&C shall attempt to agree on the value of any non-monetary component." However, as Claimant points out, there is no mention of fair market value. On balance, the Tribunal generally agrees with Claimant that the plain language of the Fee Agreement points to the value to Respondents in particular and not to a hypothetical reasonable investor.

97. Respondents argue that, beyond the language of the Fee Agreement, New York law compels the Tribunal to assess fair market value because the Fee Agreement is silent as to how the Tribunal is to measure the value. Respondents have cited venerable authority to the effect that the ordinary meaning of "value" is "fair market value." *Barnsdall Refining Corp. v. Cushman-Wilson Oil Co.,* 97 F.2d 481, 484 (8th Cir. 1938); *United States v. General Petroleum Co. of California,* 73 F. Supp. 225, 235 (D.C. Cir. 1947). Respondents also rely on a one-paragraph *per curiam* opinion rendered by the New York Appellate Division, Second Department, holding that compensation under a particular undescribed contingency agreement should be based on fair market value of certain property unidentified in the opinion. *Holman v. Calamari,* 220 N.Y.S.2d 578, 579 (2d Dept. 1961) They also rely on an opinion issued by a Washington state court in a disciplinary action. *In Re Heard,* 963

P.2d 818, 823 (Wash. 1998). Based upon this authority and the uncontroversial proposition that attorney fee agreements are construed in favor of the client, Respondents argue that the Tribunal must look only to fair market value.

98. The Tribunal agrees with Claimant on this issue. Respondents' cited case law does not compel the conclusion that the Fee Agreement requires recourse only to fair market value. The Fee Agreement refers to non-monetary components "obtained by Justice" and then to the value of those components. While the Tribunal has no dispute with the general proposition that the term "value" implies fair market value, the Fee Agreement is clear that the only property at issue is property obtained by Respondents. It is thus reasonable to include in the analysis of that value matters particular to Respondents.

99. The next question is whether looking at value particular to Respondents makes any difference. The Tribunal concludes that there is little in the record to support a conclusion that it does.

100. The primary way in which Claimant suggests that particularized value to Respondents should affect the analysis is through Mr. Weiss' assumption that Respondents would be more nimble than the average mining company at responding to coal market price fluctuations by stopping and restarting production dynamically.

101. Both of Respondents' experts were highly skeptical of Mr. Weiss' assumption that Respondents would be able to turn-on and turn-off mines repeatedly in response to price fluctuations. Mr. Feddock opined that transitioning from full-production to complete shutdown had never been done by a multi-mine coal company producing over a million tons per year. (Feddock rebuttal report, p. 5.) Mr. Feddock also testified that substantial costs in reduced productivity and higher mining costs (particularly in underground mines) would make such a strategy very difficult to implement. (Id.) He also questioned Mr. Weiss' assumptions about costs associated with maintaining idled mines. In response, Claimant presented at the hearing certain anecdotal evidence of mines that had been shut down and reopened.

102. A mining operation is a capital-intensive business that requires a large contingent of workers and a substantial amount of heavy equipment, all of which must be kept in efficient operation. In the Tribunal's view, based upon the evidence presented, it is improbable that any coal operator would be able to stop and start production in the way that Mr. Weiss suggests. The anecdotal

evidence presented by Claimant that certain mines may have been stopped and restarted does not do much to change the fundamental difficulties in proceeding according to the strategy outlined in Mr. Weiss' report.

103. As the Tribunal concludes that both the price-projection and the mine-planning aspects of Respondents' expert submissions are more credible than those submitted by Claimant, the Tribunal will base its valuation of the present value of the income stream from the Bluestone Properties on Mr. Schwartz's expert report. The Tribunal reaches this conclusion with certain reservations, however. The Tribunal believes that in some respects, Mr. Schwartz' report is likely too conservative. For example, the significant difference between Mr. Wright's reserve report (Joint Exhibit 58) prepared during the transaction, and the production calculated by Mr. Feddock and used by Mr. Schwartz, may be attributable to arbitration-related conservatism introduced into Respondents' expert reports. In addition, Mr. Feddock testified that he received some mine plans from Respondents in connection with preparing his report that may have projected higher production than Mr. Feddock estimated, but Respondents apparently did not produce those mine plans to Claimant. (Transcript pp. 933-935.)

104. Absent other considerations, choosing Mr. Schwartz's DCF analysis would place a value of $42,058,743 on the Bluestone Properties, which in turn is comprised of $38,690,155 resulting from Mr. Schwartz's DCF analysis and $3,368,588 in residual real estate value. However, this does not end the inquiry. Mr. Schwartz subtracted liabilities from his valuation in amounts that dwarfed the positive value resulting from the DCF analysis.

105. The Tribunal turns now to analysis of those liabilities.

106. The first reduction that Mr. Schwartz applied was for reclamation liability in the amount of $62,947,739. As explained above, Mr. Schwartz based this $62 million liability on Mr. Feddock's analysis.

107. Mr. Feddock's analysis, concluding that reclamation liability amounts to of $74,580,509, is substantially inconsistent with all of the contemporaneous evidence associated with the deal. That evidence specifies reclamation liability in the range of $6.7 million (Joint Exhibit 47) to 7.4 million (Joint Exhibit 58).

108. Mr. Schwartz used a discount rate of 7.47% for reclamation liability. This stands in contrast to the discount rate of 15% that he used for his DCF analysis. Mr. Schwartz explains this disparity by emphasizing that in his view,

the liabilities are more certain than the cash flows. He also pointed out in his testimony that some of the discount rates he adopted for the liabilities are taken from actuarial reports, GAAP standards or Mechel Bluestone's books.

109. The Tribunal concludes that Mr. Schwartz's use of different, lower discount rates for costs is not appropriate in the context of a DCF analysis for the purpose of valuing a transferred business. The use of such lower rates has the effect of overweighting the liabilities and thereby masking the true near-term value of the business. In this regard, the Tribunal notes that Respondents placed the Bluestone Properties into a special purpose entity in order to shield their businesses from potential liabilities. (Jim Justice, Transcript, pp. 600-01.) As Claimant pointed out, this means that they can place the Bluestone Properties into bankruptcy if their plans for the Bluestone Properties do not work out. As such, the Tribunal concludes that the discount rates should be the same for measuring both assets and liabilities.

110. Because Mr. Feddock's calculation of reclamation liabilities is inconsistent with the contemporaneous evidence, and Mr. Schwartz has used an improper discount rate, the Tribunal must reject Respondents' calculation of this item.

111. Moreover, as Mr. Weiss suggested in his supplemental report, because the calculation of reclamation liabilities is bound up with production volumes and timing, those liabilities would be more reasonably included as a line item in the DCF analysis, not an after-the-fact deduction. The Tribunal is not in a position to analyze how a lower level of reclamation liability would fit into a DCF model as to timing and volume. For this reason, the Tribunal finds that it has no credible basis for assigning any reclamation liability. While the Tribunal recognizes that this may understate the effect of reclamation liability on the DCF model, any such discount is more than offset by the conservative production assumptions adopted by Respondents' experts.

112. The next liability item that Mr. Schwartz deducts from his DCF value is OPEB liability. Mr. Schwartz calculated this number by taking the accrued liability on the Mechel Companies' balance sheet at the end of 2014 (generated using a discount rate of 4.48%) and reducing it by a tax rate of 20.05% to arrive at a total liability of $41,663,464. As discussed above in connection with reclamation liability, the Tribunal finds that it is not appropriate to mix and match discount rates in the context of this DCF analysis.

113. Mr. Weiss, on the other hand included a cost item of $2.5 million per year into his DCF analysis to account for the OPEB liabilities at the same discount rate that he used for cash flow. This gives the Tribunal the ability to assess these liabilities, and the Tribunal adopts Mr. Weiss' method to establish OPEB liabilities. By the Tribunal's calculation, the present value of the OPEB liabilities at $2.5 million per year through 2043 is $16,377,191.46. However, as Mr. Schwartz noted repeatedly, Mr. Weiss used pre-tax numbers while Mr. Schwartz used post-tax numbers. The Tribunal therefore applies Mr. Schwartz' nominal income tax rate of 20.05 percent to reduce the OPEB liabilities to $13,093,564.57.

114. Mr. Schwartz next deducts a working capital deficit in the amount of $35,611,915 from the DCF amount, effectively assuming that this amount would be paid immediately on the transaction date. Mr. Schwartz defines working capital as current assets and current liabilities. (Schwartz Expert Report, p. 17.) Respondents argue that they will have to correct this imbalance through the immediate infusion of capital. Claimant argues that the Bluestone Properties had been operating with negative working capital for years (both before and after Respondents initially sold the Bluestone Properties to companies related to Mechel OAO) and that there is no reason that this imbalance needed to be immediately corrected, if at all.

115. Claimant has pointed to a variety of evidence to suggest that Respondents intended to renegotiate at least part of the working capital deficit. In particular, Joint Exhibit 59 demonstrates that even before the transaction, Respondents had been in negotiations to limit or delay these liabilities, and that some elements may not be due as assumed by Mr. Schwartz. Claimant also introduced evidence that the Bluestone Properties have consistently operated with negative working capital. Of particular interest in this regard is a statement from Mechel Bluestone's 2009 audited financial statements which state "[p]rior to [Respondents' sale of the property to companies related to Mechel OAO], the Company historically maintained a negative working capital position due to its short operating cycle during which capital assets produced inventories at or near ready-for-sale condition on a daily basis." (Joint Exhibit 50, p. 9.)

116. Respondents argue that it was always assumed that Respondents would be required to pay down the working capital deficit, pointing to the provision of the Option Agreement providing that Respondents would infuse $20 million of

additional capital and Jim Justice's testimony that he has contributed $52 million since the repurchase. (Jim Justice, Transcript p. 604.)

117. On balance, the Tribunal agrees with Claimant on the application of this alleged liability. A working capital deficit is a snapshot of short-term liabilities at a given point in time. The Tribunal has not heard a persuasive explanation to suggest that the deficit on Mechel Bluestone's books at the time of the transaction needed to be paid down immediately, or at all. That Respondents undertook to invest more money in the business going forward does not provide such an explanation. Nor does Mr. Justice's testimony that he has invested further funds into the business. (Indeed, Mr. Justice's further investment of more than $50 million calls into question his claim that the property was worthless.) There is nothing in the record to suggest that Respondents actually have reduced the working capital deficit for the Bluestone Properties. Moreover, it is easy to conceive of reasons why it would be prudent to increase it – *e.g.,* investment in restarting production. And, as Joint Exhibit 50 suggests, once production is restarted, a working capital deficit may be warranted. The Tribunal thus attributes no value to this alleged liability.

118. The final liability item that Mr. Schwartz deducted was UMWA pension withdrawal liability. Mr. Schwartz estimated this withdrawal liability at $37,373,431. A variety of the entities that comprise the Bluestone Properties are signatories to the UMWA 1974 Pension Plan, a multi-employer pension plan providing retirement benefits to the employees of signatories. Signatories contribute at a prescribed rate and become subject to withdrawal liability if they cease contributions for a period of time. Mr. Schwartz assumed that because the operations at the Bluestone Properties had been idle for some time at the time of the transaction, partial withdrawal would occur in 2016.

119. Respondents could avoid withdrawal, according to Mr. Schwartz, by reopening a UMWA mine at full employment by July 1, 2015, which he asserted would be impractical. As a result, Mr. Schwartz assumed that Respondents would experience substantial withdrawal liability relating to the Bluestone Properties. Mr. Schwartz referenced an actuarial report prepared for Mechel Bluestone in February 2015 estimating withdrawal liability in the amount of more than $83 million on the assumption that the Bluestone Properties would withdraw before July 1, 2015. (Schwartz Expert Report, pp. 21-23.) However, his actual calculation of withdrawal liability was based on an annual withdrawal payment under a formula prescribed by ERISA. He assumed that these payments would continue in perpetuity and applied a

discount rate of 7.47%. Based on this formula, Mr. Schwartz found the post-tax discounted value of withdrawal liability to be $37,373,431.

120. Claimant argues that Mr. Schwartz' inclusion of UMWA pension withdrawal liability is speculative. It points to an agreement between Respondents and the UMWA to recall union miners at the Red Fox and Coal Mountain mines. Respondents argue in response that the company operating Coal Mountain was not a participant in the UMWA 1974 Pension Plan and that the reopening of that mine did not avoid withdrawal liability. (*See, e.g.,* Joint Exhibit 100.)

121. Both Parties acknowledge that whether to partially withdraw from the UMWA pension plan would be a discretionary decision for Respondents. Moreover, Respondents' labor counsel had provided them with advice regarding how to substantially reduce or even eliminate withdrawal liability through selective hiring of participant miners in particular years. (Joint Exhibit 101.) The same attorney suggested to Respondents that, upon reopening mines, they may be able to renegotiate union contracts to substantially lower or even eliminate withdrawal liability ("Maximum leverage exists before workers are reemployed"). (Id.)

122. Respondents argue, though, that the cost of the decision not to withdraw would exceed the cost of withdrawal, and were the Tribunal not to include withdrawal liability in its analysis, Mr. Schwartz's DCF numbers would have to be increased because labor costs would be higher. Respondents' argument would have more force had Respondents been more forthcoming about the circumstances of their rehiring of the workers at Coal Mountain and the associated negotiations with the UMWA. As it is, the Tribunal finds that it is being asked to take it on faith that Respondents will face this enormous contingent liability and will not be able to negotiate or navigate a reduction or a payment delay.

123. Moreover, the Tribunal finds that Mr. Schwartz' application of a significantly lower discount rate to withdrawal liability than to his DCF calculation is inconsistent with the level of uncertainty associated with this liability item. The Tribunal simply does not know whether this liability will occur, when it will occur or how much it will amount to. As a result, the Tribunal has no choice but to discount this potential liability entirely.

v. Valuation Conclusion and Amount of Recovery

124. Based on the above analysis, the Tribunal finds that the Bluestone Properties should be valued as follows using Mr. Schwartz' DCF Analysis as a basis:

Valuation of Bluestone Properties	
Net present value of properties	$38,690,155
Real Estate (land)	$3,368,588
Total Asset Value	**$42,058,743**
Reclamation Liability	0
OPEB Liability (UMWA)	($13,093,564)
Working Capital Deficit	0
Pension Withdrawal Liability	0
Net Company Value	$28,965,178

125. Respondents paid $5 million in connection with their reacquisition of the Bluestone Properties. It does not appear that Mr. Schwartz accounted for that cash payment in his analysis. It must therefore be subtracted from the value of the Bluestone Properties to reach the amount of the Recovery.

126. Accordingly, the Tribunal finds that the value of the non-monetary Recovery under Paragraph 6 of the Fee Agreement is $23,965,178.

127. As discussed above, the Tribunal finds that the Recovery occurred in February 2015. Thus, pursuant to paragraph 5 of the Fee Agreement Claimant is due 15% of the Recovery less the $1 million retainer. Fifteen percent of $23,965,178 is $3,594,776.77. The amount due to Claimant under the Fee Agreement is thus $2,594,776.77, plus interest.

128. Claimant requests pre-award interest at the statutory rate of 9% set forth in New York CPLR 5001 and 5004, commencing on February 12, 2015 (the closing date of Respondents' repurchase of the Bluestone Properties). The Tribunal agrees that Claimant is entitled to pre-award interest, but not at the statutory rate and not commencing on February 12, 2015.

129. Paragraph 5 of the Fee Agreement provides that payment to Claimant shall be made within ten days of the Recovery. The Tribunal therefore finds that payment on account of the Recovery of the Bluestone Properties was not due until February 22, 2015, and that no interest is due from before that date.

130. Paragraph 6 of the Fee Agreement provides that where the non-monetary component of the Recovery consists in whole or in substantial part of assets that cannot be monetized expeditiously, Respondents may elect to pay the non-monetary component over a period of ten calendar quarters at an annual interest rate of 8%. The Tribunal recognizes that this sentence of Paragraph 6 is not directly applicable to the present dispute, but it renders the Fee Agreement ambiguous as to whether the Parties intended the 8% contractual rate or the 9% statutory rate to apply to prejudgment interest applicable to a non-monetary Recovery valued through the arbitration process described in Paragraph 6.

131. Under New York law, where a contract provides that interest will be paid at a specified rate until the principal has been paid, the contract rate governs, not the statutory rate, and interest is due until payment of the principal is made or until the contract is merged into a judgment. *Marine Management, Inc. v. Seco Management, Inc.,* 574 N.Y.S. 2d 207, 208 (2d Dept. 1991). Ambiguous provisions in attorney-client fee agreements are to be construed in a manner most favorable to the client. *Shaw v. Manufacturers Hanover Trust Co.,* 68 N.Y. 2d 172, 176 (1986). In light of this rule of construction, the Tribunal concludes that the Fee Agreement provides for an 8% pre-award interest rate on the amount of a Recovery determined under Paragraph 6. However, post-award interest shall be calculated at the 9% statutory rate pursuant to NY CPLR 5004.

132. The Tribunal calculates pre-award interest $253,918.30.

D. Equity and Quantum Meruit

133. Claimant has argued that the Tribunal has the power (and obligation) to do equity. According to Claimant, this means that, even if the Tribunal were to find that the Bluestone Properties were valueless (which, as discussed above, it did not), the Tribunal should nonetheless award Claimant a fair value for its work on the Delaware Litigation. In furtherance of this argument, Claimant argues that in New York, an arbitrator is not bound by principles of substantive law and should apply his or her own sense of law and equity to the facts as he or she finds them to be.

134. The Tribunal agrees with Claimant that it has the power to do equity where, as here, the arbitration agreement contains a broad arbitration clause. However, regardless of the outer boundaries of arbitral jurisdiction in New York, the Tribunal views the exercise of its equitable authority as

circumscribed by the substantive law and the terms of the Parties' agreement. To be explicit, the Tribunal declines Claimant's invitation for the Tribunal to deviate from the principles of substantive law.

135. The question then, when determining an equitable result, is what is the Parties' agreement and how does the substantive law apply to that agreement? Here, the Parties' agreement is an attorney-client fee agreement that calls for a contingency fee. The Fee Agreement, like other contingency fee agreements, provides that if the client obtains a recovery from the covered representation, the attorney receives a percentage of that recovery, and if the client takes nothing, the attorney takes nothing (except in this case the $1 million retainer). There is nothing inherently inequitable about that.

136. Had Respondents brought the Delaware Litigation to conclusion and lost, all would agree that Claimant should take nothing further under the Fee Agreement. Although the Fee Agreement itself is arguably ambiguous about the issue, Claimant and Respondents agree that if Respondents had won the Delaware Litigation but were unable to collect the monetary judgment, Claimant would have taken nothing further under the Fee Agreement. The Parties agree that these results would not be inequitable.

137. The reason Claimant argues that the Tribunal must "do equity" here is that Respondents settled the Delaware Litigation without Claimant's participation and without providing Claimant any information about the settlement. Claimant argues that this is unfair because Respondents unilaterally settled the Delaware litigation so as to, if Respondents allegations in this arbitration regarding the valuation of the Bluestone Properties are correct, deny Claimant any recovery under the Fee Agreement.

138. Jay Justice testified that Respondents thought Claimant did a good job representing Respondents in the Delaware Litigation and there has been no allegation that Claimant's legal services in the Delaware Litigation were in any way deficient. (Transcript, p. 856.)

139. Claimant's testimony suggests that Respondents' case in the Delaware Litigation was strong. Respondents, though, had concerns about the merits and especially the collectability of any monetary judgment obtained in the Delaware Litigation. Respondents testified that they had concluded, at least in part based on advice from Claimant, that the best possible result of the Delaware Litigation would be that Respondents would be able to execute on the

judgment to take back the Bluestone Properties (the same properties Respondents obtained from the settlement).

140. Regardless of the merits or collectability of any proceeds from the Delaware Litigation, there is no doubt that Respondents had the right to settle the Delaware Litigation on whatever terms they wished – even if that meant paying $5 million and making a commitment to invest more money into a property that has only sentimental value to Respondents.

141. However, New York law applies equity to this situation under principles of quantum meruit. If, as the Tribunal has found here, there is a positive recovery, contingency counsel is compensated according to the terms of the contingency agreement. If, on the other hand, the client discharges the attorney and discontinues an otherwise meritorious action, the attorney is entitled to recover the reasonable value of his services in quantum meruit. *Demov, Morris, Levin & Shein v. Glantz,* 53 N.Y.2d 553 (1981); *Andrews v. Haas,* 214 N.Y. 255 (1915).

142. Therefore, if as Respondents' argue, they dismissed the Delaware litigation and paid $5 million in order to acquire a valueless asset, under the law of New York, Claimant would be entitled to the reasonable value of its services. The question is what is that reasonable value?

143. Claimant has submitted a "proforma fee memo," remarkable for its absence of detail, suggesting that the time-charges recorded by Claimant for the Delaware Litigation at Claimant's full billing rates would have amounted to $5,346,627.50. Claimant argues in its post-hearing submissions that if the Tribunal decides to award a quantum meruit recovery, it should be in this amount.

144. Respondents argue that Claimant did not include a quantum meruit claim in its arbitration demand and, therefore, should be awarded nothing. It is true that Claimant did not argue quantum meruit until the Tribunal introduced the concept, but rather argued general equitable principles. The Tribunal finds, however, that Claimant's general arguments addressed to equity are sufficient to enable the Tribunal to reach the quantum meruit issue.

145. The Tribunal finds, however, that Respondents were not afforded an opportunity to challenge Claimant's $5.4 million in alleged time charges, and it declines to consider Claimant's fee memo. The Tribunal may consider the actual benefit that Respondents received from the Delaware Litigation in

determining the quantum meruit value of Claimant's services. *Mahan v. Mahan,* 623 N.Y.S.2d 899 (2d Dept. 1995). Moreover, as Claimant argues vociferously, the Tribunal has authority to reach a just result.

146. As discussed above, the Tribunal finds that the Bluestone Properties did have a positive value sufficient to provide Claimant with a Recovery under the Fee Agreement in excess of $2.5 million. The Tribunal further finds in the alternative that in the event that the Bluestone Properties have no value or a negligible value, the amount awarded constitutes a reasonable approximation of the value of Claimant's services in prosecuting the Delaware litigation.

E. Is Claimant Entitled to Recover Attorney's Fees Associated with this Arbitration?

147. Claimant argues that it is entitled to an award of its attorney's fees expended in connection with prosecuting this arbitration. Claimant bases its argument on the following paragraph in the Fee Agreement:

> *Payment of Fees and Expenses in Related Proceedings.* Justice agrees to pay, to the extent permitted by law, our fees and costs and expenses incurred, in connection with any inquiry, investigation, claim, action or other proceeding arising from or relating to this engagement or any other engagement we may accept from Justice (other than in connection with any claim, action or proceeding brought by Justice against us), including compensating Sullivan & Cromwell in accordance with our ordinary billing practices for time spent and expenses incurred in, for example, investigating claims, collecting an providing documents and information, or appearing as a witness pursuant to subpoena or otherwise. This clause is without prejudice to any rights of indemnification or contribution we may otherwise have.

148. Claimant appears to argue that the above paragraph not only provides for fee-shifting with respect to this arbitration, but provides for one-way fee shifting in favor of Claimant regardless of the arbitration's result.

149. Respondents argue persuasively that Claimant's construction of the recited paragraph is at odds with the structure and intent of the Fee Agreement. Neither of the arbitration provisions in the Fee Agreement makes any reference to fee shifting. Moreover, the above-recited paragraph by its own language appears to refer to work that may be done by Claimant in proceedings

ancillary to the matter for which it was engaged, not for fee disputes with its client. Such provisions are common in engagement letters where such ancillary proceedings might be contemplated, *e.g.,* business deals that might lead to antitrust scrutiny, patent prosecution, and so on.

150. In addition, Respondents cite to New York authority holding, also persuasively, that one-way fee shifting provisions in favor of the attorney in attorney-client fee agreements are fundamentally unfair and unreasonable, and thus unenforceable. *See Ween v. Dow,* 822 N.Y.S.2d 257, 261-62 (1st Dept. 2006).

151. The Tribunal determines that the Fee Agreement does not provide for an award of attorney's fees in connection with this arbitration. Moreover, even if it did so provide, the provision would be unenforceable as non-reciprocal.

152. Absent a provision of the Fee Agreement, the Tribunal looks to the AAA Commercial Arbitration Rules governing this arbitration. Rule 47(d)(ii) of the AAA Commercial Arbitration Rules provides that an award may include "an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement." As discussed immediately above, the arbitration agreement does not provide for an award of attorney's fees. In addition, Respondents have not requested an award of fees. As a result, the Tribunal determines that the Parties are to bear their own attorney's fees for this arbitration.

F. Allocation of Costs

153. Rule R-47 of the AAA Commercial Arbitration Rules provides that the arbitrator shall assess the fees, expenses and compensation provided in Rule R-53 (AAA Administrative Fees), Rule R-54 (Expenses) and Rule R-55 (Arbitrator Compensation). Rule R-47 further provides that the arbitrator may assess and apportion such fees, expenses and compensation as the arbitrator determines is appropriate.

154. The Tribunal awards costs to Claimant as follows:

a. AAA administrative fees paid in the amount of $26,549.89;

b. Expenses incurred in connection with the prosecution of this arbitration in the amount of $320,204.12; and

c. Arbitrator fees paid in the amount of $60,449.38.

III. Award

Based upon the above-recited facts and reasoning, the Tribunal hereby AWARDS as follows:

(1) All evidence submitted by the Parties is admitted and has been considered according to its weight;

(2) It is declared and decreed that Respondents' reacquisition of the Bluestone Properties was a Recovery within the meaning of the Fee Agreement and that such Recovery occurred on February 12, 2015;

(3) It is further declared and decreed that at the time of the Recovery the Bluestone Properties bore a present value of $28,965,178, and thus the amount of the Recovery was $23,965,178 (the value of the Bluestone Properties less the $5 million repurchase price);

(4) In accordance with the formula set forth in paragraph 4 of the Fee Agreement, Claimant is awarded $2,594,776.77, plus interest as set forth below;

(5) Claimant shall recover interest on the amount set forth in paragraph (4) above at the rate set forth in paragraph 6 of the Fee Agreement, *i.e.,* 8% annual interest as of the date of this Award in the amount of $253,918.30;

(6) To the extent not specifically addressed above, all other claims raised by either Party in this arbitration are dismissed;

(7) The Parties shall each bear their own attorney's fees associated with this arbitration;

(8) Claimant is awarded recovery of costs associated with prosecuting this arbitration in the amount of $320,204.12;

(9) The administrative fees of the American Arbitration Association totaling $29,049.89 and the compensation of the Tribunal totaling $120,898.75 shall be borne by Respondents. Respondents paid portions of these fees previously. The remaining amounts are $26,549.89 for administrative fees and $60,449.38 for arbitrator compensation. Therefore, Respondents shall

reimburse Claimant $86,999.27 representing that portion of said fees in excess of the apportioned costs previously incurred by Claimant;

(10) Subsequent to the date of this Award, up to and including the date on which the amount due on this Award is paid in full, Claimant shall recover 9% annual interest, as prescribed by NY CPLR 5004 on all amounts awarded hereunder;

(11) This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

5-12-16
Date

Richard H. Silberberg
Arbitrator

I, Richard H. Silberberg, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

5-12-16
Date

Richard H. Silberberg
Arbitrator

State of New York
County of New York
SS:

JOSEPH M. GARGUILO
Notary Public, State of New York
No.01GA6249544
Qualified in Queens County
Commission Expires Nov. 11, 20 19

On this 12 day of May 2016, before me personally came and appeared **Richard H. Silberberg**, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

May 12, 2016
Dated

Notary Public

5/12/16
Date

Irene C. Warshauer
Irene C. Warshauer
Arbitrator

I, Irene C. Warshauer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

5/12/16
Date

Irene C. Warshauer
Irene C. Warshauer
Arbitrator

State of New York
} SS:
County of New York

JOSEPH M. GARGUILO
Notary Public, State of New York
No.01GA6249544
Qualified in Queens County
Commission Expires Nov. 11, 2019

On this 12 day of May 2016, before me personally came and appeared **Irene C. Warshauer**, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

May 12, 2016
Dated

Joseph M Garguilo
Notary Public

MAY 12, 2016

Date

Sherman W. Kahn
Arbitrator and Tribunal Chair

I, Sherman W. Kahn, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

MAY 12, 2016

Date

Sherman W. Kahn
Arbitrator and Tribunal Chair

State of New York

County of New York

SS:

JOSEPH M. GARGUILO
Notary Public, State of New York
No.01GA6249544
Qualified in Queens County
Commission Expires Nov. 11, 2019

On this 12 day of May 2016, before me personally came and appeared **Sherman W. Kahn**, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

May 12, 2016
Dated

Joseph M. Garguilo
Notary Public